

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

TERRY F. BRADY,)	
)	
Petitioner,)	
)	
v.)	No. CIV-04-1672-L
)	
DAVID MILLER,)	
)	
Respondent.)	

ORDER

This matter is before the court for review of the Report and Recommendation entered by United States Magistrate Judge Doyle W. Argo on January 20, 2005, wherein he recommended that the Petition for Writ of Habeas Corpus be dismissed upon filing. In his timely filed objections, petitioner notes that the Report and Recommendation misstates the date on which his Oklahoma sentences were imposed. Specifically, the Report indicates that petitioner pleaded guilty and was sentenced in the District Court of McIntosh County on August 3, 1998; the correct date is August 3, 1999. Because of this error, the Report found that the Oklahoma sentences were imposed prior to the sentences in Wyoming Case Nos. DOC 25-346 and DOC 25-347, which were entered on April 7, 1999.

Pursuant to 28 U.S.C. § 636(b), the court must “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” In accordance with this mandate, the court has reviewed the Report and Recommendation, petitioner’s objections thereto, and the

entire case file. Based on this review, the court concludes that the Report and Recommendation misstated the date on which petitioner's Oklahoma sentences were imposed. This error, however, does not alter the analysis of petitioner's claim. The Magistrate Judge correctly found that petitioner's plea agreement did not specify that the Oklahoma sentences were to run concurrently with Wyoming Case Nos. DOC 25-346 and DOC 25-347. Given that the Wyoming sentences were imposed prior to the Oklahoma sentences, the fact that the Oklahoma plea agreement does not mention these sentences is fatal to petitioner's argument. The Magistrate Judge correctly found the Oklahoma plea agreement was not breached and petitioner is not entitled to habeas relief.

In sum, the thorough and well-reasoned Report and Recommendation is approved and adopted with the limited exception noted above. The Petition for Writ of Habeas Corpus is dismissed. Judgment will issue accordingly.

It is so ordered this 3rd day of May, 2005.



TIM LEONARD
United States District Judge